Supreme Court, U.S.
FILED
MAY 21 1996
CLERK

No. 95-1737

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

VINCENT A. LUCAS, *Petitioner*

v.

E. GORDON GEE, et al., *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE FRANKLIN COUNTY, OHIO, COURT OF APPEALS

RESPONDENTS' BRIEF IN OPPOSITION

BETTY D. MONTGOMERY
ATTORNEY GENERAL

Jeffrey S. Sutton
State Solicitor
30 East Broad Street
17th Floor
Columbus, Ohio 43215
(614) 466-8980

Steven J. McDonald*
Assistant Attorney General
33 West 11th Avenue
Suite 209
Columbus, Ohio 43201
(614) 292-0611

**Counsel of Record*

RESTATEMENT OF QUESTIONS PRESENTED

1. Should this Court exercise its supervisory powers to correct an alleged factual error by a mid-level state appellate court when the issue was not properly raised below and the state law relevant to that issue is, as even the petitioner concedes, already fully consistent with federal law?

2. Does a former member of an advisory university body, who has no right to participate in or speak at its meetings, unless the body, in its sole discretion, invites such participation, have standing to seek an injunction to enforce the body's internal parliamentary rules on behalf of its current members?

3. Does this Court have jurisdiction to consider whether a state trial court properly interpreted and applied that state's rules of civil procedure?

TABLE OF CONTENTS

COUNTERSTATEMENT OF THE CASE 1

INTRODUCTION 1

STATEMENT OF FACTS 2

REASONS WHY THE PETITION SHOULD BE DENIED 6

I. Petitioner did not properly raise his constitutional claims in the courts below. 6

II. Petitioner lacks standing to assert his remaining claims. 8

III. This Court lacks jurisdiction to interpret state rules of civil procedure. 9

IV. There is no "special and important reason" for the Court to hear this case. 10

CONCLUSION 11

TABLE OF AUTHORITIES

Alexander v. Yale University, 631 F.2d 178 (2d Cir. 1980) 9

Allen v. Wright, 468 U.S. 737 (1984) 9

Madison Joint School District v. Wisconsin Employment Relations Commission, 429 U.S. 167 (1976) 7 n.2

O'Shea v. Littleton, 414 U.S. 488 (1974) 9

Warth v. Seldin, 422 U.S. 490 (1975) 9

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

VINCENT A. LUCAS, *Petitioner*

v.

E. GORDON GEE, et al., *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE FRANKLIN COUNTY, OHIO, COURT OF APPEALS

The respondents, The Ohio State University; E. Gordon Gee, the President of Ohio State and the presiding officer of its University Senate; and James L. Nichols, the Treasurer of Ohio State and the Parliamentarian of its University Senate, respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the Franklin County, Ohio, Court of Appeals' opinion in this case. That opinion is reported at 104 Ohio App. 3d 423, 662 N.E.2d 382 (1995), *motion for review denied*, 74 Ohio St. 3d 1418, 655 N.E.2d 738 (1995), *motion for reconsideration denied*, 74 Ohio St. 3d 1465, 656 N.E.2d 1300 (1995).

COUNTERSTATEMENT OF THE CASE

INTRODUCTION

Contrary to petitioner Vincent Lucas's characterization, this *pro se* petition for a writ of certiorari

is merely his latest step in a lengthy campaign of harassment by litigation. It appears that, for Lucas, litigation is both a game and an obsession. This is only one of four *pro se* lawsuits that he has now filed against respondents and various related parties on much the same issues. Indeed, just two weeks before he filed his petition with this Court, he refiled *this very same case* in the United States District Court for the Southern District of Ohio, apparently in an effort to prolong this litigation still further regardless of this Court's determination on his petition. In each case and at each stage, he has filed countless briefs and motions and asserted, but rarely pursued, ever-shifting theories as though he were playing "litigation dodgeball." In what is for him typical fashion, he served his petition for a writ of certiorari on respondents' counsel in an envelope that was plastered with postage stamps honoring former President Nixon and that bore the handwritten inscription "may the spirit of Richard Nixon bless these briefs."

There is no need or reason for this Court to ensnare itself in Lucas's web of vexation and gamesmanship. Over the course of the past two years, eleven judges sitting on three different courts have already considered Lucas's claims in this case at great length and have unanimously rejected them on no fewer than five separate occasions. In words that are now doubly true, they have noted that "[t]he time and effort devoted to this case by the trial court and the court of appeals far exceed[] the legal significance of the various allegations of wrongdoing complained of by [Lucas]." (Pet. 12a). Accordingly, and for the reasons set forth below, his petition for a writ of certiorari should be denied.

STATEMENT OF FACTS

On November 5, 1993, the Board of Trustees of respondent The Ohio State University voted to revise Ohio

State's university-wide sexual harassment policy so as to bring it into line with recent changes in the law. By its express terms, that policy is applicable to all faculty, staff and students at Ohio State. As such, it is also implicitly incorporated in a provision of Ohio State's Code of Student Conduct prohibiting "[v]iolation of other published University regulations, policies, or rules."

At the time of the revision of the university-wide policy, the Student Code also contained a short, express sexual harassment provision, and the University determined to replace it with the revised policy. In accordance with its informal tradition of seeking wide consultation on such matters, the University brought the proposed revision before the University Senate for an advisory vote on April 9, 1994. The University Senate is composed of administrators, faculty and students and, under University rules, is empowered to "make recommendations" to the Board of Trustees.

Prior to the meeting, appellant Vincent Lucas, a student member of the Senate, submitted a 12-page memorandum detailing various objections to the proposed revision, together with a proposed amendment. Copies of both documents were distributed to each member of the Senate before the meeting. During the meeting, Lucas spoke a number of times and at some length concerning his views on the proposed revision -- in fact, he spoke more, and more often, on the subject than any other member of the Senate. Among other things, Lucas presented his proposed amendment, addressed his reasons for making it, stated his belief that the proposed revision was unconstitutional and referred the Senate to his lengthy memorandum for further detail.

As the meeting progressed, however, Lucas became increasingly disruptive, and it became increasingly clear that

he sought to obstruct consideration of the proposed revision, not to further it. Accordingly, respondent E. Gordon Gee, who, as Ohio State's President, serves as the presiding officer of the Senate, eventually brought the discussion to a close and called for a vote. The Senate then voted to endorse the Student Code revision by the resounding margin of 69-10.

Soon thereafter, Lucas filed a *pro se*, class action lawsuit in the Franklin County, Ohio, Court of Common Pleas against Ohio State, Gee and the Senate's Parliamentarian (collectively, "Ohio State"). Lucas's complaint alleged that these respondents had "blatantly disregarded" Robert's Rules of Order and thereby committed some 17 technical violations of parliamentary procedure at the Senate meeting. On that basis, and that basis alone, Lucas asked the trial court to declare the Senate vote "null and void" "pursuant to Robert's Rules of Order," to enjoin Gee from engaging in further such "violations," and to award Lucas his costs and "attorney fees." Despite Lucas's professed belief that the new sexual harassment policy was unconstitutional, he did not challenge it in any way.

On June 6, 1994, Ohio State moved to dismiss Lucas's complaint for failure to state a claim upon which relief may be granted -- specifically, that Robert's Rules of Order and other such forms of internal parliamentary procedure do not have the status of law and are not judicially enforceable. Ohio State also noted that Lucas's lawsuit would have no practical effect even if Lucas were to prevail. Because the university-wide sexual harassment policy would remain in effect regardless of the outcome of Lucas's lawsuit, Ohio State's students would continue to be subject to it no matter what happened to the vote on the Student Code provision. On July 6, 1994, the trial court notified the parties that it was converting the motion to dismiss into a

motion for summary judgment and asked them to address the latter issue in more detail.

While Ohio State's motion was pending, two additional events of relevance occurred. First, on June 3, 1994, Ohio State's Board of Trustees voted unanimously to replace the old Student Code sexual harassment provision with the new university-wide sexual harassment policy. Second, soon after Lucas filed his complaint, the University Senate held its last meeting of the academic year and Lucas's term of office came to an end. Although Lucas subsequently sought another term, he was not reelected. On the basis of these two events, Ohio State also sought the dismissal of Lucas's complaint on the grounds that his challenge to the Senate vote had been mooted by the independent action of the Board of Trustees and that, having lost office, he no longer had standing to seek prospective injunctive relief to enforce Senate rules.[1]

On August 10, 1994, the trial court granted Ohio State's dispositive motion. In its opinion, the trial court held that the university-wide policy would continue to apply "irrespective of whether or not . . . Gee violated Robert's Rules of Order" with respect to the Student Code provision and that there was therefore no real case or controversy to be resolved; that the courts lack jurisdiction to interfere with matters of internal parliamentary procedure; and that, in any event, the case was mooted by the June 3, 1994, adoption of the Student Code provision by Ohio State's Board of

---

[1] In what was apparently an effort to resurrect his standing, Lucas then filed an original action in *quo warranto* in the Franklin County, Ohio, Court of Appeals against the student who was named the alternate for the student who succeeded Lucas as a student Senator. When the Court of Appeals dismissed that case for failure to state a claim upon which relief could be granted, Lucas refiled it as a *mandamus* action against Ohio State and the student in the Franklin County, Ohio, Court of Common Pleas. That case was also dismissed.

Trustees. (Pet. 18a-22a).

Lucas appealed to the Franklin County, Ohio, Court of Appeals, which affirmed the trial court's ruling on June 1, 1995. *Lucas v. Gee*, 104 Ohio App. 3d 423, 662 N.E.2d 382 (Franklin Cty. 1995) (Pet. 1a-10a). In its opinion, the court of appeals specifically held that Lucas's "first assignment of error regarding a denial of First and Fourteenth Amendment rights is not reviewable on this appeal as *plaintiff did not raise these questions in the trial court*." *Id.*, 104 Ohio App. 3d at 426, 662 N.E.2d at 384 (Pet. 4a) (emphasis added). The court of appeals also denied Lucas's subsequent motion for reconsideration (Pet. 11a-13a), and the Ohio Supreme Court denied Lucas's motion for discretionary review, *Lucas v. Gee*, 74 Ohio St. 3d 1418, 655 N.E.2d 738 (1995), and yet another motion for reconsideration, *Lucas v. Gee*, 74 Ohio St. 3d 1465, 656 N.E.2d 1300 (1995).

REASONS WHY THE PETITION SHOULD BE DENIED

I. PETITIONER DID NOT PROPERLY RAISE HIS CONSTITUTIONAL CLAIMS IN THE COURTS BELOW.

In his petition, Lucas's central proposition appears to be that *pro se* plaintiffs are entitled to "leeway" in their pleadings, particularly when federal constitutional rights are at stake, and that he therefore should have been permitted to proceed with a First Amendment claim against the respondents notwithstanding the serious shortcomings of his complaint. While perhaps unexceptional in the abstract, that proposition has nothing whatever to do with the facts of this case and is not properly before this Court.

As the courts below found, the facts stated in Lucas' complaint cannot fairly be stretched to encompass an

individual constitutional challenge to Ohio State's actions. Rather, what that complaint states, plainly and at considerable length, is simply that, at a meeting of the University Senate, Gee made a series of parliamentary rulings that Lucas believes to have "blatantly disregarded" Robert's Rules of Order in no fewer than 17 separate ways. (Pet. 49a-52a).

Nowhere in his lengthy and highly specific exposition did Lucas in any way mention the First Amendment or any other provision of federal law, nor can any such federal claims reasonably be read into his complaint by inference. As Lucas made clear from the very first paragraph of his complaint, the claims that he asserted were all *class* claims. Lucas's eleventh-hour assertion that he was deprived of his own First Amendment rights, on the other hand, was plainly personal and individual in nature. Moreover, Lucas's new-found claim was not even remotely connected to the relief that he sought. In his prayer for relief, Lucas asked only that the trial court invalidate certain votes taken at the Senate meeting "pursuant to Robert's Rules of Order" and enjoin Gee to comply with those rules in the future. (Pet. 52a). Such relief has nothing whatever to do with Lucas's supposed constitutional claim. Had he actually asserted such a claim, he could reasonably have been expected to have sought a corresponding remedy.[2]

---

[2] In any event, contrary to Lucas's apparent beliefs, there is no constitutional right to filibuster. In *Madison Joint School District v. Wisconsin Employment Relations Commission*, 429 U.S. 167 (1976), this Court expressly held that, notwithstanding the First Amendment, "[p]lainly, public bodies may confine their meetings to specified subject matter." *Id.* at 175 n.8. Moreover, the applicable rules of parliamentary procedure specifically provide that a member of the Senate has no right to speak more than twice or for more than ten minutes total on any given issue, that a member cannot make a second speech on an issue until all other members who wish to do so have had an opportunity to speak once, and that, if it appears that a member is engaged in disruptive or obstructive behavior, the chair need not recognize him at all and may properly rule his motions out of order. The uncontroverted evidence below established that Gee acted in

The fact that Lucas is proceeding *pro se* makes no difference. Lucas did not properly raise that issue in the courts below, and it has never been expressly ruled upon. Indeed, until his motion for reconsideration in the court of appeals, he instead asserted that he possesses "proficiency in legal research and writing and a superior understanding of legal jurisprudence," that he is "vastly more qualified than the average layman," and that he therefore "possess[es] the skills necessary to prosecute the case." In any event, Lucas's petition amply demonstrates that he is in no need of any further "leeway" from the courts.

Finally, as even Lucas concedes, Ohio law on these issues is fully consistent with established federal standards. (Pet. 13-18). Indeed, Lucas himself argues that the Ohio Supreme Court and every federal circuit that has ever considered these issues are in complete agreement on the relevant law. (*Id.*). Accordingly, even if the court of appeals had misapplied Ohio law "contrary to the facts of this case" (Pet. 12), that factual "mistake" would not warrant this Court's review. This Court does not sit to determine whether the "ruling [of a mid-level Ohio court] conflicts with the decisions of the . . . Ohio Supreme Court." (Pet. 22).

II. PETITIONER LACKS STANDING TO ASSERT HIS REMAINING CLAIMS.

Apparently conceding that the vote of Ohio State's Board of Trustees to adopt the Student Code sexual harassment provision mooted his claim for retrospective relief, Lucas nevertheless continues to argue that he is entitled to injunctive relief "requiring [Gee] to comply with the Senate's rules of debate and procedure" in the future. (Pet. 29). Contrary to Lucas's assertions, however, there is

---

accordance with these provisions at the April 9, 1994, Senate meeting.

no evidence whatever in the record to suggest that such "violations" are rampant at Ohio State, and Lucas, who is no longer a member of the Senate, cannot enforce the rights of current Senators in any event.

It is not enough for Lucas to assert a belief that a "law" may somehow be violated at some point in the future; "an asserted right to have the Government act in accordance with law is not sufficient." *Allen v. Wright*, 468 U.S. 737, 754 (1984). Rather, "a plaintiff . . . must allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he would personally benefit in a tangible way from the Court's intervention." *Warth v. Seldin*, 422 U.S. 490, 508 (1975) (emphasis in original; footnote omitted). "Past exposure to [allegedly] illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974). In short, because Lucas is no longer a member of the Senate and has no right to participate in its future meetings,[3] "the requested relief [would not] aid [him] in the slightest," and he therefore lacks standing to pursue it. *Alexander v. Yale University*, 631 F.2d 178, 184 (2d Cir. 1980).

III. THIS COURT LACKS JURISDICTION TO INTERPRET STATE RULES OF CIVIL PROCEDURE.

Lucas's final Question Presented asks this Court to interpret a provision of the Ohio Rules of Civil Procedure

---

[3] While meetings of the Senate are open to the public, visitors have no floor privileges. They may not introduce or vote on any matter before the Senate, and they may speak only upon invitation and upon such terms and conditions as the Senate, in its discretion, may set. In any event, Lucas has attended only a single meeting of the Senate in the nearly two years since his term expired and, even then, made no effort to participate.

and to hold that the Ohio courts applied it improperly in this case. That issue, which Lucas *never* raised below, is purely a matter of state law and is not within the scope of this Court's jurisdiction.

IV. THERE IS NO "SPECIAL AND IMPORTANT REASON" FOR THE COURT TO HEAR THIS CASE.

For the reasons stated above, there is no federal question at all in this case, let alone a substantial one. Moreover, Lucas does not claim that there is any conflict at all among the courts on the legal issues that he considers relevant. Rather, this case presents, at most, an alleged factual error by a mid-level state court in applying a state law standard that, as even Lucas himself concedes, is in full accord with widely established federal law.

Moreover, the internal workings of a purely advisory university body are of little consequence either within or outside of the ivory tower. Indeed, the issue is of no real consequence even to Lucas. Notwithstanding his professed concern for the integrity of Senate proceedings, Lucas has attended only a single meeting of the Senate in the nearly two years since his term expired, and did so then only after his lack of interest became an issue in the Ohio Supreme Court. He has pursued this lengthy litigation for strictly vindictive reasons.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

BETTY D. MONTGOMERY
OHIO ATTORNEY GENERAL

Jeffrey S. Sutton
State Solicitor
30 East Broad Street
17th Floor
Columbus, Ohio 43215
(614) 466-8980

Steven J. McDonald*
Assistant Attorney General
33 West 11th Avenue, Suite 209
Columbus, Ohio 43201
(614) 292-0611

**Counsel of Record*